
From: Tombul Bridget E
Sent: Friday, August 03, 2007 3:51 PM
To: Martin Paula A
Cc: Campbell Carol A; Fry Deborah L
Subject: FW: Tax Treaty

Hi Paula:

Here are our responses to your questions regarding Form 8833:

1) If a taxpayer is claiming a tax treaty do they have to attach Form 8833 to the Form 1040NR or the 1049NR-EZ to comply with section 6114 or Treas. Reg. section 301.7701(b)-7? Form 8833 is not required to be filed by all taxpayers claiming treaty benefits. The 6114 regulations waive the filing requirements in certain situations. In general, individual taxpayers are not required to file Form 6114 unless they are dual resident taxpayers claiming to be nonresidents under section 301.7701(b)-7.

2) For the few countries and articles that allow the taxpayer to claim a tax treaty on Form 1040, do we have legal authority to ask for Form 8833? The only situations where a resident alien can claim a US treaty benefit is where the resident qualifies for a specific exception to the "saving clause" (a treaty provision that otherwise provides that the treaty will not affect the tax liability of US citizens and residents). Treas. Reg. 301.6114-1(c)(iv) generally exempts individuals from filing Form 8833 if they derive particular types of income. I believe most exceptions to the saving clause involve these types of income.

3) Do we have legal authority to deny a tax treaty because Form 8833 is not attached or the treaty is claimed on the wrong Form (1040EZ or 1040A)?

No, you cannot deny treaty benefits if the taxpayer is entitled to them. You may impose a penalty of \$1,000 under section 6712 of the Code on an individual who is obligated to file and does not. The individual may ask for a waiver of the penalty if there was reasonable cause.

If you have any other questions, or if the information in this e-mail is unclear or not helpful, please contact me.

Regards,
Bridget E. Tombul
Special Counsel to Division Counsel (W&I)
CC:WI

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